

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2016 Biennial Review of Telecommunications	)	WC Docket No. 16-132
Regulations: Wireline Competition Bureau	)	

**REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) submits these reply comments in response to comments submitted by USTelecom, Verizon, and CenturyLink (collectively the ILECs) in the above-referenced proceeding.<sup>1</sup> NCTA agrees with the ILECs that competition in the marketplace for retail voice services has substantially reduced the need for regulation of those services. In adapting the regulatory regime in response to competition, however, the Commission must take care not to undermine the foundation on which that competition rests. While some of the issues raised by the ILECs are the type of “regulatory underbrush” that the biennial review was designed to identify and repeal, the comments also raise many issues that potentially have consequences for every voice service provider in the country and therefore require careful analysis before any changes are made.

As documented in the ILEC comments, the marketplace for voice services has changed dramatically in the two decades since the Telecommunications Act of 1996 was adopted.<sup>2</sup> In light of this competition, the Commission is required to “repeal or modify any regulation it

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<sup>1</sup> Public Notice, *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, CG Docket No. 16-124, et al., FCC 16-149 (rel. Nov. 3, 2016).

<sup>2</sup> Comments of USTelecom at 2-5; Comments of CenturyLink at 3-7; Comments of Verizon at 2-3.

determines to be no longer necessary in the public interest.”<sup>3</sup> For some of the requirements addressed in the ILEC comments, this test is easily satisfied. For example, as explained by Verizon, it makes sense to repeal the rule that requires carriers to charge the same long-distance rates in urban and rural areas because consumers routinely purchase all-distance service and stand-alone long-distance service has become an anachronism.<sup>4</sup> These requirements are exactly the kind of “regulatory underbrush” that the biennial review is designed to address.

Beyond these issues, however, the ILECs have identified a number of issues that require a much more careful analysis by the Commission. While the ILECs assert that they hold no special advantages over their competitors and no longer should be subject to different regulatory obligations,<sup>5</sup> that argument is not correct. For example, in many rural areas the incumbent LEC is the only provider of voice and broadband service. Precisely because of their “long history” and “unique position” in these rural areas, incumbent LECs are receiving tens of billions of dollars from the Connect America Fund that was not made available to their competitors.<sup>6</sup> As recipients of billions of dollars that were collected from American consumers, incumbent LECs should not be absolved of any regulation the Commission concludes is necessary in these non-competitive areas.

Similarly, even in competitive areas it is not the case that incumbent LECs are identically situated to their competitors. In any given geographic area, the ILEC generally started with a

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<sup>3</sup> 47 U.S.C. § 161(b).

<sup>4</sup> Comments of Verizon at 12. The Commission also should consider eliminating or modifying certain rules that apply solely to VoIP providers, such as the requirement to collect and retain customer acknowledgements with respect to access to E911 services. 47 C.F.R. § 9.5(e)(2).

<sup>5</sup> Comments of USTelecom at 6 (“Whatever advantages BOCs or ‘incumbent’ LECs once enjoyed as monopolist providers have long disappeared.”); Comments of CenturyLink at 8 (“[A]ny remaining regulation can only be justified if it is absolutely necessary, narrowly-tailored and treats all providers the same.”).

<sup>6</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17731-32, ¶ 177 (*CAF Order*).

monopoly for voice service and an obligation to serve all homes and businesses. That monopoly, and the network reach it conveyed, was still almost completely in place when the Telecommunications Act of 1996 was implemented. As a result, even as incumbent LECs have lost retail voice customers over the years, thousands of interconnection arrangements continue to reflect, and depend on, the central role played by the incumbent LECs' legacy networks.<sup>7</sup>

The point of this analysis is not to suggest that the Commission cannot or should not consider deregulating incumbent LECs. To the contrary, NCTA agrees that the Commission should proceed expeditiously where deregulation of incumbent LECs can be accomplished without harm to other parties. But where deregulation has more significant consequences for the operation of the competitive marketplace, the Commission must be particularly thorough and thoughtful in its analysis regarding which regulations should apply and the appropriate transitions to the extent it repeals or modifies regulations.

For example, the ILECs have suggested that the Commission should eliminate tariff obligations and interconnection requirements that are applicable only to incumbent LECs.<sup>8</sup> Putting aside the question of whether adoption of such proposals is beneficial or warranted as a policy matter, from an operational perspective the requested relief has the potential to create chaos in the marketplace. Competitive carriers routinely purchase tariffed services from the incumbent LECs (e.g., circuits to access public safety answering points) and exchange traffic

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<sup>7</sup> Similarly, CenturyLink's suggestion that "ILECs have no special advantages in deploying poles, ducts, conduit, and rights-of-way" seems to ignore the decades-long head start that incumbent LECs had over every other network provider. Comments of CenturyLink at 13. Because local governments rarely, if ever, allow the installation of duplicative poles, it is not possible for any other provider to be on equal footing with the incumbent LEC.

<sup>8</sup> Comments of CenturyLink at 11 (asking the Commission to "eliminate most, if not all" interconnection obligations); Comments of Verizon at 9 (The Commission should conduct a holistic review of its tariffing rules.); Comments of USTelecom at 11 ("Competition has brought into question the continuing utility of the tariffing regime.").

with the incumbent LECs pursuant to interconnection agreements negotiated under Section 251(c). Eliminating the obligation of incumbent LECs to file those tariffs or submit to the standards and procedures specified by Section 251(c) would require the negotiation of thousands of new agreements among companies that are marketplace competitors, which would be a monumental undertaking for the entire industry with the potential to jeopardize the quality of service consumers have come to expect.

In addition to the operational challenges that would be triggered by many of the ILECs' requests, the Commission also must be mindful of the interplay between the requested relief and issues already teed up in existing rulemaking proceedings. For example, in its 2011 reforms of the intercarrier compensation regime, the Commission adopted rules that begin the transition to a bill-and-keep compensation regime. But the Commission also included a Further Notice of Proposed Rulemaking raising a variety of questions related to interconnection and tariff obligations in the context of a bill-and-keep regime.<sup>9</sup> Simply because issues have been identified in the context of the biennial review does not mean they can or should be resolved in a vacuum that does not consider other proceedings. Rather, the Commission should ensure that a full and complete record is developed on each of these issues before deciding how best to proceed.

In conclusion, NCTA agrees with the ILECs that the market for voice services has changed in ways that compel the repeal or modification of some of the requirements applicable to retail voice service. But in considering those changes, the Commission must be mindful that the proposals will have potentially significant consequences for hundreds of competitive providers and for the competitive marketplace that consumers have come to expect.

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<sup>9</sup> *CAF Order*, 26 FCC Rcd at 18116-120, ¶¶ 1316-25.

Accordingly, the Commission should proceed in a thoughtful manner as it moves forward in this proceeding.

Respectfully submitted,

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